



## **3800 COURTS AND JUDICIAL PROCESS**

### **3810 COURT ATTENDANCE AND INTERVIEWS**

Attendance at court or quasi-judicial hearings and proceedings as required is an official duty assignment required of all Department members as circumstances may dictate. Members shall appear in a timely manner as dictated by the body holding the proceeding and the policies in *General Orders*.

#### **3810.1 Absence from Court or Quasi-Judicial Proceedings**

Permission to be absent from court or a quasi-judicial proceeding must be obtained from the prosecuting attorney handling the case or other competent court official or hearing officer.

#### **3810.2 Appearance Times**

Unless otherwise instructed by a prosecuting attorney or other competent court official or hearing officer, a member shall be in attendance at the proceeding in question as follows:

- **Tucson City Court – Civil Traffic or Civil Infraction Case**  
Members shall appear by the time the case is scheduled to commence.
- **Tucson City Court – Criminal or Criminal Traffic Case**  
Members shall appear 15 minutes before the case is scheduled to commence.
- **Justice Court or Quasi-Judicial Case**  
Members shall appear 15 minutes before the case is scheduled to commence.
- **Superior or Federal Court**  
Members shall appear 30 minutes before the case is scheduled to commence.

#### **3810.3 Attire and Conduct at Court Appearances**

When appearing in court, members shall either wear the official uniform or clothing conforming to the standard for officers working in plain-clothes as described in *General Orders 1400*, with the addition that male officers shall wear neckties. Members shall present a neat and clean appearance, avoiding any mannerisms that imply disrespect for the court.

### **3811 Subpoenas**

#### **3811.1 Acceptance of Subpoenas by Members for Their Attendance**

Members shall accept all subpoenas legally served on them for attendance at court or quasi-judicial procedures. Any questions on the validity of a subpoena or the need to attend will be directed either to the prosecuting entity handling the case or to the Department Legal Advisor.



### **3811.2 Subpoena *Duces Tecum***

*Duces Tecum* is a Latin term meaning "bring with you." It is a court order requiring parties who are summoned to appear in court to bring with them some document or item of evidence. Members are not the official custodians of records or Department property, and unless authorized, shall not take records or other materials, other than evidence, for presentation in court. Any subpoena *duces tecum* served on a member for presentation of a police record shall be immediately brought to the attention of the Legal Advisor, who will assist the member in responding to the subpoena.

In most situations, police records can be obtained by a subpoena *duces tecum* served on the appropriate custodian of records: Police Records Superintendent for police reports; OIA Commander for Internal Affairs files; Human Resources Division Commander for personnel files.

Questions on acceptance of or compliance with a subpoena *duces tecum* shall be referred to the Department Legal Advisor.

### **3811.3 City Court Evidence**

An officer's court docket will indicate whether the officer needs to bring case evidence to a court hearing. Officers shall take evidence to a hearing when so indicated on the officer's court docket.

## **3812 Compromising Cases**

Members shall not interfere with the efficiency or integrity of the administration of criminal justice, or having knowledge of such interference, fail to inform a supervisor. Members shall not participate in the compromise of any case on behalf of the City.

## **3813 Civil Compromises**

When an incident in question involves the City, members shall not enter into any civil compromises which involve a plaintiff or victim signing an agreement not to prosecute or assist in prosecution in exchange for some compensation (i.e., a monetary settlement for damages) or who declares that they are satisfied with the settlement (even though no compensation was bestowed). For example, a civil compromise between an on-duty police officer who collides with a civilian or who does so off duty while in a City vehicle is not permissible except by the direction of the City Manager or the Risk Management Office. Officers will refer any person who is attempting to reach such a civil compromise with the City to the City Risk Management Office.

## **3814 Pre-Trial Interviews**

### **3814.1 General**

Members shall cooperate with attorneys, whether prosecution, defense or civil, by scheduling and appearing at pre-trial interviews as specified in these procedures. If the interviewer refuses to conduct the interview within these guidelines, the member will



document the interviewer's lack of cooperation. This information is to be routed through the chain of command and forwarded to the City Prosecutor's Office or the County Attorney's Office, as appropriate.

The City Prosecutor's Office wishes to be notified of defense attorney interviews only if the member believes that something happened in the interview that would seriously affect the outcome of the case. Members shall notify the Deputy County Attorney assigned to a felony case prior to responding to a defense attorney's request for an interview.

When members are the victim of a crime, they are eligible for the protections accorded under Arizona Victims' Rights Laws.

#### **3814.2 Time and Place for Attorney Interviews**

Interviews shall not be scheduled on a member's days off. The interview will be scheduled to take place during the member's duty hours and between the time period of 0800 and 1800 hours, Monday through Friday. If this is not possible (i.e., the member works from 1900 to 0500 hours) the interview will be scheduled between the time period of 0800 and 1800 hours, and as close as possible to the member's tour of duty to minimize overtime costs. Members whose duty hours begin at or after 1800 hours may begin interviews at 1700 hours. If at all possible, the interview will be scheduled at the member's and the interviewer's mutual convenience. Unless specifically agreed upon by both the member and the interviewer, pre-trial interviews shall not continue past 2100 hours.

Interviews with the City Public Defender's Office shall take place in the City Public Defender's office or any other appropriate location mutually agreed upon. Interviews between members and private defense attorneys shall be conducted in the police facility at which the member works, or an appropriate location mutually agreed upon by both parties.

#### **3814.3 Defense Attorney Interviews**

Defense attorneys will be advised to contact the Legal Advisors' Office (LAO), using an *Attorney Interview Request Form (TPD2180)* to request a pre-trial interview with any member. In circumstances when time limitations preclude use of the formal process, members may be contacted directly to schedule an interview. The member will schedule the interview and notify the LAO. In either case, a *TPD2180* form will be completed to provide an audit trail.

When the LAO receives request forms, they will be forwarded to the appropriate member via GroupWise.

Department members shall cooperate with defense attorneys by responding to requests for interviews within five (5) working days of the request date. Failure to cooperate in the voluntary interview process may provide the defense with cause to have member's testimony precluded, a subpoena issued, sanctions against the member taken or the case dismissed.

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If a request is received for a member who will not be able to respond within five days, the member's supervisor shall inform the LAO of the date the member is expected to be available. The LAO will notify the defense attorney of the expected availability date. The supervisor shall ensure that the member receives the request on the first day back to duty.

Members may terminate an interview with a defense attorney provided there are reasonable grounds to do so.

**3814.4 Prosecuting Attorney Requests**

Requests for interviews by prosecuting attorneys or their investigative staff shall be accommodated as much as possible within the guidelines established above.

**3814.5 Telephonic Attorney Interviews in Criminal Cases**

If requested, officers shall agree to a telephonic interview in misdemeanor cases, and may either tape the interview themselves, or seek the defense attorney's agreement to provide a copy of the taped interview to the officer. Officers may agree to telephonic interviews in felony cases only with specific permission of the Deputy County Attorney assigned to the case.

**3814.6 Other Attorney Interviews**

Interviews with attorneys on civil matters, unrelated to a criminal case, may be scheduled in the same manner as for interviews in criminal cases after consultation with the Legal Advisor.

Members contacted for an interview by attorneys representing plaintiffs in actions against the City of Tucson, or the member (as a result of employment by the City) shall contact the Department Legal Advisor or the attorney representing the City member prior to granting such interviews. (See also *General Orders 3818*.)

**3814.7 Inability to Schedule Interview or Contact Requesting Attorneys**

If the interviewer refuses to conduct the interview within these guidelines, or if a member has made a good-faith effort to contact the defense attorney and has been unable to do so, or if the officer needs to reschedule the interview and has been unable to contact the defense attorney, the member shall document the efforts made by the officer. This documentation shall be routed through the chain of command and forwarded to the LAO.

**3814.8 Recording of Interviews**

Interviews may be recorded, (e.g., digital, tape, video, etc.), at the request of either the member or the defense attorney. Equipment for such recording shall be the responsibility of the requesting party. Members may terminate an interview with a defense attorney



provided there are reasonable grounds to do so. Note: Defense attorneys may secretly tape record interviews with victims and witnesses in criminal cases. Officers must assume that all of their conversations are being recorded when being interviewed by a defense attorney or their investigator.

#### **3814.9 Failure to Respond to Interview Requests**

If the LAO receives information from an attorney regarding a member's lack of response or failure to cooperate, the LAO may contact the member's supervisor and Chain of Command as necessary.

#### **3814.10 Other Legal Assistance**

Members desiring legal assistance prior to or during the interview may contact the Department Legal Advisor for advice.

### **3815 Court Attendance and Subpoena Requirements**

It is the policy of the Department to fully support the criminal justice system in prosecuting persons accused of criminal activity. Members shall attend and be prepared to testify at all court and quasi-judicial proceedings as required by subpoena or as directed by a supervisor.

#### **3815.1 Subpoena Precedence**

In situations where a conflict exists between a criminal appearance and a civil appearance, the criminal appearance has priority. In cases of subpoena conflicts, subpoena precedence shall be as follows:

- **Criminal Cases**

In criminal cases, the precedence of subpoenas from highest to lowest is Federal Court, Superior Court, Justice Court and City Court.

- **Civil Cases**

In civil cases, the precedence of subpoenas from highest to lowest is Federal Court, Superior Court, Justice Court, City Court (*i.e.*, Civil Traffic or Administrative Hearings) and other quasi-judicial hearings, such as MVD.

In cases of subpoena conflicts, if the prosecutors are unavailable or the situation cannot be resolved by the member, the Department Legal Advisor shall be notified of the conflict as soon as possible.

Members who have notified the appropriate parties regarding appearance in a higher court, and who have been cleared from the lower court case, still have a responsibility for the lower court case. If the case in the higher court is canceled or continued or the member is dismissed before the starting time of the lower court case, the member shall contact the prosecutor for the lower court case and ascertain whether their presence is needed. If the prosecutor cannot be contacted, the member shall appear as scheduled.



### **3815.2 Absence from Court**

If a member cannot attend a scheduled court case the member shall notify the ASD as soon as possible prior to the trial. In subpoena conflict situations, the member shall attempt to have one of the appearances rescheduled as noted in *General Orders 3815.1*.

If, due to unavoidable circumstances, a member cannot attend a scheduled court case, the member shall notify their supervisor as soon as possible. The supervisor shall notify the appropriate court. Notification shall be via the *Documentation of Conflict With City Court* (TPD 1925) form. This form shall be sent directly to ASD who will then forward to City Court. If time is critical, the supervisor shall make notification by telephone and follow up with the appropriate documentation. In all cases, a copy of the form shall be forwarded to the ASD for records purposes.

Circumstances which will not be considered "unavoidable" include, but are not limited to, mandatory training that can be re-scheduled, non-mandatory training, seminars, or requests for time off. Officers who follow the procedures for "Leaves of Absence" should not experience conflicts between their court docket and leave requests that were submitted in a timely fashion.

If the member cannot attend court because of a call for service, the member shall call the court, or ask a supervisor or Communications to do so. Afterwards, the member shall complete the *Documentation of Conflict with City Court* (TPD 1925) form and send it to the ASD for documentation.

### **3815.3 Vacation Block**

Members desiring to block future court appearance dates for vacation, or other planned activity, where they expect to be unavailable for Superior Court or City Court shall complete a *Leave Request/Roster-Adjustment Notification* (TPD 1512) form and route it through their supervisor to the personnel assigned to update CENPERS. This notification shall be completed and entered to give the Courts timely notice of the request, and must be received with at least 21 days' notice whenever possible. Members shall personally notify the Courts and/or prosecutors if a known conflict exists in advance, and shall be available for the proceeding if it cannot be rescheduled.

### **3815.3 City Court**

Upon arriving at City Court for a case, all members shall log in through the computer located in the Officer Liaison Office. Once the case has been completed, or the member is leaving City Court, the member shall log out in the same manner. All blocks on the computer mask must be completed. Under no circumstances shall any employee complete any of the log-in or log-out procedures for another employee.

## **3816 Conduct in Court and Related Proceedings**

### **3816.1 Testimony**



All members shall be prepared to give testimony on cases in which they are involved. Members shall be attentive and respectful to magistrates, judges, and hearing officers. They shall speak calmly in an audible tone, giving testimony confined to the case before the court, with the strictest accuracy. Circumstances of the case shall not be overstated or suppressed, and members shall answer questions for both the prosecution and the defense in a respectful, impartial manner.

An officer who is subpoenaed to testify for the defense in any case shall immediately notify both the prosecutor handling the case and the Legal Advisor's Office.

#### **3816.2 Remarks to Defense Attorneys**

Members shall not make "off the record" remarks and/or statements to a defense attorney or their investigator.

#### **3816.3 Firearms in the Courtroom**

Firearms may be worn in the courtroom unless the trial judge indicates otherwise. Members shall adhere to the rules established at the various court venues regarding firearms.

#### **3816.4 Outside Compensation for Court or Interview Testimony and Appearances**

Any compensation paid by a source other than the City (i.e. witness fees paid by an attorney) shall be endorsed and turned over to the Department's Budget Office as soon as possible. The only exception to this procedure is if the member does not receive compensation (i.e. regular salary or overtime) from the City for the time involved. Any appearance as an "expert" for any entity other than the City or the Pima County Attorney's Office shall require written permission from the Chief of Police. See *General Orders* under Expert Witness.

For further information relative to witness and jury duties, see the applicable City *Administrative Directives*.

#### **3816.5 Parking for Court**

The Administrative Support Division (ASD) will liaison with City Court administration and establish parking guidelines as needed. Member's attending City Court may park without paying at specifically identified parking meters located on Toole Avenue and on Alameda Street. These meters are identified by a blue circular decal with Parkwise in white lettering across the center. Members must leave a TPD business card on the vehicle dashboard when parking at one of these meters. Members may also park in the Pennington Garage located at 110 E. Pennington. Entry and exit at this garage is automated. Upon leaving City Court, members will go to the Parkwise office on the first floor of the garage and obtain a voucher card to be used to exit the garage. Officers transporting prisoners will be provided secured parking spaces in the City Court parking structure.

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Members attending Superior Court or having Police business at the County Attorney's office may park in the Public Works parking complex. Members need to retain their parking stub and have it properly validated at the County Attorney's office.

**3816.6 Standby for Court**

Off-duty members who are ordered to stand by for court by a prosecutor shall immediately notify their supervisor. The supervisor shall contact the prosecutor and make every effort to resolve the conflict. If the conflict has no resolution other than to put the member on "standby," the member's Division Commander shall define the member's duty status for the time the member is required to be on call for court.

**3817 City Court and MVD Hearing Scheduling**

**3817.1 City Court Scheduling and Verification**

The scheduling system for City Court is designed and operated by City Court staff. The schedule is electronically forwarded to TPD daily. Members are ordered into City Court by an individual trial listing that can be accessed electronically. Members can access their dockets internally via the TPD Intranet page and the "Court Dockets" button and externally via the City of Tucson Internet site at <http://tpdinternet.tucsonaz.gov/court>. The electronic court docket notification system carries the same weight as a subpoena and attendance is mandatory. In all cases, members shall verify City Court appearances as detailed in this section.

It shall be the member's responsibility to review their court dockets at least weekly on Thursdays after 0630 hours. Members can then print their dockets for the upcoming week.

For impending court cases, members shall verify their court schedule electronically after 1800 hours on the day prior to the trial, or any time thereafter up to the time scheduled for trial. Overtime is not authorized for the system query.

**3817.2 MVD Administrative Hearings**

Whenever an officer completes an implied consent or admin per se action and paperwork that could result in a defendant having a hearing with MVD, the officer shall complete and attach to the report a *Subpoena List and Statement of Unavailability* form provided by MVD. The case officer is responsible for listing those Department members who are essential to an administrative hearing, including their payroll number and regularly-scheduled days off and any known vacation days or other conflict for the next 90 days. Supervisors are responsible for ensuring that this form is completed and routed in every case.



**3818 Civil Service Commission Proceedings**

**3818.1 General**

The City of Tucson Civil Service Commission holds hearings on an as-needed basis to respond to appeals of disciplinary action by employees of the City of Tucson. Department members may be called upon to attend such a hearing to give testimony on behalf of the City or the appealing employee.

**3818.2 Notification and Attendance**

When an employee is needed for an appearance at a Civil Service Commission hearing, they will be notified through the Human Resources Department and the Office of the Chief of Police. This notification will generally be in the form of a memorandum directed to the employee stating the date, time and place of the hearing. In some instances, telephonic notification may be made through the Chief's Office.

If an employee is summoned to appear to give testimony at a Civil Service Commission hearing they shall direct any questions to the Chief of Staff, the Legal Advisor, or the City Attorney handling the case. Attendance at such a hearing is mandatory for any employee who is duly notified.

**3818.3 Pre-Hearing Interviews**

The City Attorney handling the appeal before the Civil Service Commission may request an interview with any Department employee regarding the pending matter. Employees shall fully cooperate with all such City Attorney requests.

Attorneys representing the appealing employee may request an interview with any employee scheduled to appear before the Civil Service Commission. Employees are not required to attend any pre-hearing interviews, including telephone interviews, with defense counsel on any Civil Service matter. Any employee contacted for such an interview shall notify the Chief of Staff, the Legal Advisor, or the City Attorney handling the appeal before giving any such interview.

**3819 Court Security**

**3819.1 General**

Each court venue maintains its own security procedures and personnel. Department personnel are expected to cooperate with efforts directed to maintaining a secure court environment and shall comply with the policies at the individual courts.



### **3819.2 Police Officers in Court for Personal Reasons**

Officers involved in personal domestic, civil or criminal litigation, including jury service, shall not enter the Court buildings carrying weapons.

### **3819.3 Uniform Officers at Superior Court**

Officers wearing authorized police uniforms to Superior Court will present their Department identification card at the point of entry. Officers shall be prepared to advise security personnel of their destination and purpose. Once admitted, the Department ID card shall be worn on the officer's left uniform pocket or suspended from the official lanyard.

### **3819.4 Plainclothes Officers at Superior Court**

Plainclothes officers will display their Department ID card to security personnel upon entering Superior Court buildings. In addition to reporting their destination and purpose, they will also sign out a Court ID card. Both the Court and Department ID cards shall be worn or suspended from the official lanyard until leaving the facility. Upon leaving, officers must return the Court ID to security personnel and sign out.

### **3819.5 Undercover Officers at Superior Court**

Undercover personnel (i.e. narcotics officers) may enter the Superior Court buildings using one of three options:

- They may enter the Court building without a weapon;
- They may enter the Superior Court building via the underground parking area and proceed to the Sheriff's security area on level "B". Officers will approach the south door and present their Department ID card. Officers may check their weapons in a gun locker and then use the Administration Building elevators to enter the Court building as a citizen (subject to the security gate); or
- They may opt to sign in as a plainclothes officer, required to display Court and Department ID cards as noted above.

If an undercover officer feels they need to be escorted to their courtroom via the security elevator due to an extraordinary threat to their safety, they shall have their Commander contact the Sheriff's Court Security Commander to make the necessary arrangements.

## **3820 COURT ORDERS**

### **3821 General**

Officers in the field will frequently encounter matters that involve orders issued by a court. This section will outline procedures on how to handle specific types of court orders commonly encountered by officers. If an officer has any questions about the validity of a particular order, or how to proceed with these or any other type of court order, they shall seek clarification before



taking any action. The Legal Advisors' Office is available on a 24-hour basis to assist in such matters.

In handling situations involving court orders, the officer's primary concerns are to preserve the peace and let the civil courts work out the solutions to the underlying problems.

#### **3821.1 Guidelines for Court Order Enforcement**

Officers dealing with cases involving persons in possession of court orders, which are civil in nature (e.g., *Orders of Protection*, *Injunctions Against Harassment*, child custody orders, and *Preliminary Injunctions* in regard to the dissolution of marriage or legal separation), shall consider the following guidelines:

- Ask the complainant for a copy of the court order. If they have one, inspect it for validity. Check for dates, a judge's signature, and jurisdiction (in-state or out-of-state). Note that a court order does not require a seal in order to be considered valid.
- An out-of-state Order of Protection, or similar order intended to prevent acts of domestic violence, is presumed by statute to be valid and enforceable. Other out-of-state court orders (those not involving domestic violence) may be entitled to recognition depending on the circumstances, including whether they have been domesticated in Pima County.
- Unless otherwise indicated in the content of the court order, an order is effective at the date and time the order was made by the court. Orders of the court can be modified many times. The general rule to follow is that the last dated order supersedes all earlier orders insofar as matters in which the orders conflict.
- If the violator is present, the officer shall attempt to determine whether or not the court order was served on the violator. This can be done by asking the violator if they have been served, and/or by checking applicable computer records.
- If the violator has not been served, the officer shall notify the violator that a court order is in effect. The officer will then ask the violator to comply with the court order, or risk arrest for violating the order. Unless a court order specifically authorizes law enforcement officers to take some action, officers generally do not have the authority to enforce the court orders. Officers do, however, have the authority to arrest a person for violating a court order, and for any offenses that may occur in the officer's presence. This in addition to the possibility that the person may be held in contempt of the court's order at a later hearing should the complainant file a "show cause" order with the court. Any action taken shall be fully documented.

#### **3821.2 Domestic Violence Related Orders**

There are several components of the law, which are similar with respect to *Orders of Protection*, *Injunctions Against Harassment*, and *Preliminary Injunctions* (relating to the dissolution of marriage or legal separation). These are:



- They all include the following statement in the order:  
**“WARNING: This is an official court order. If you disobey this order, you may be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.”**
- The effectiveness of an order does not depend on its registration with the Pima County Sheriff’s Department. A copy of the order is presumed to be a valid existing order of the court for one year from the date of service on the defendant in the case of *Orders of Protection* and *Injunctions Against Harassment*. For *Preliminary Injunctions* the order is presumed to be valid until a final decree of dissolution of marriage or legal separation is entered, or the action for dissolution of marriage or legal separation is dismissed.
- An officer may, with or without a warrant, arrest a person for a violation of ARS 13-2810- “Interfering with Judicial Proceedings,” if the officer has probable cause to believe that the person has violated an *Order of Protection*, *Injunction Against Harassment*, or *Preliminary Injunction (in dissolution of marriage)*. The arrest may be made whether or not the offense was committed in the officer’s presence. Persons arrested for violating any of these court orders are not eligible for field release.
- A peace officer making an arrest pursuant to violation of one of these orders is neither civilly nor criminally liable for the arrest as long as the officer acts upon probable cause and without malice.

## 3822 Harassment Cases and *Injunctions Against Harassment*

### 3822.1 Definition

Harassment is defined by statute as follows: “A series of acts over any period of time that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person and serves no legitimate purpose.”

### 3822.2 Procedure to Receive an *Injunction Against Harassment*

A person may file a verified petition with a magistrate, justice of the peace, or superior court judge for an injunction prohibiting harassment. An *Injunction Against Harassment* issued by a court may:

- Enjoin the defendant from committing a violation of one or more acts of harassment.
- Restrain the defendant from contacting the plaintiff or other specifically designated persons and from coming near the residence, place of employment or school of the plaintiff or other specifically designated locations or persons.
- Other relief necessary for the protection of the alleged victim and other specifically designated persons.



Officers who respond to a call alleging that harassment has been or may be committed shall inform the complainant of the procedures and resources available for the protection of the complainant, including:

- An *Injunction Against Harassment* may be available to them.
- The emergency telephone number for the local police agency.
- Telephone numbers for emergency services in the local community.

### **3823 Orders of Protection**

#### **3823.1 General**

An *Order of Protection* is a court order which addresses domestic relations situations. *Orders of Protection* may be issued by a magistrate, a justice of the peace, or a superior court judge. The orders are issued for the purpose of restraining/prohibiting a person from committing an act of domestic violence. The order is civil in nature, but persons violating an *Order of Protection* may be subject to arrest for ARS 13-2810, "Interfering With Judicial Proceedings."

If the violator has not previously been served with the court order, and it is an *Order of Protection*, the officer shall serve the violator with the order as described below.

#### **3823.2 Scope**

An *Order of Protection* may include any of the following:

- Enjoin the defendant from committing a violation of one or more of the offenses included in domestic violence.
- One party may be granted the use and exclusive possession of a shared residence. The other party may return to the residence on one occasion to retrieve belongings, if accompanied by a law enforcement officer.
- Restrain the defendant from contacting the plaintiff or other specifically designated persons and from coming near the residence, place of employment, or school of the other party, or any other specifically mentioned location.
- Prohibit the defendant from possessing or purchasing a firearm for the duration of the order, and requiring the defendant to transfer any firearm currently owned or possessed to the local law enforcement agency.
- If the order was issued after notice and a hearing at which the defendant had an opportunity to participate, order the defendant to complete a domestic violence offender treatment program.



- Any other protection that can be shown to be necessary for the safety of the victim or other specifically named persons.

3823.3 **Service** [CALEA 74.2.1]

Arizona law requires peace officers to serve an *Order of Protection* within their jurisdiction, if the defendant can be served in the jurisdiction. However, Tucson City Court normally arranges for the service of such orders by a contracted process server. If requested to serve an *Order of Protection* within the city, officers shall do so.

In situations where an officer is the first to inform a defendant of the existence of an *Order of Protection*, and the plaintiff has a copy of the order that an officer can use to serve the defendant, the officer shall accomplish service by giving a copy of the order to the defendant. The officer shall then advise the violator that he or she has been served with an *Order of Protection*, and any continued violation of the order shall be treated as a violation of "Interfering With Judicial Proceedings" and the violator will be arrested.

3823.4 **Completion of the Affidavit of Service**

Whenever an officer serves an *Order of Protection* on a defendant, the officer must complete an *Affidavit of Service* and route it to the appropriate court.

- **City Court**

The plaintiff will generally provide the officer with an *Affidavit of Service* that has been given to the plaintiff by the City Court. The officer shall complete the *Affidavit*. One copy shall be given to the Defendant, one to the Plaintiff, and the remaining one routed to TPD Records for routing to the City Court. The *Affidavit of Service* is not required to be notarized.

- **Justice Court and Superior Court**

These courts do not provide the plaintiff with an *Affidavit of Service* with their *Orders of Protection*. If an officer serves an *Order of Protection* from either of these two courts, the officer must obtain and complete an *Affidavit of Service* at the appropriate court.

The Justice Court *Affidavit of Service* can be obtained and processed 0800-1700, Monday through Friday in the Civil Division located on the 2<sup>nd</sup> floor at 115 North Church. It is not required to be notarized.

The Superior Court *Affidavit of Service* can be obtained and processed 0800-2400, Monday through Friday in the Clerk's Office located on the first floor at 110 East Congress. It is not required to be notarized.



**3824    *Emergency Orders of Protection***

**3824.1    *General***

The *Emergency Order of Protection* is a court order that is obtained telephonically and relates to domestic violence situations. A judge, justice of the peace, magistrate, or commissioner may issue the Emergency Order of Protection. It expires at the close of the next day of judicial business following the day of issue unless otherwise continued by the court. Persons violating an *Emergency Order of Protection* may be subject to arrest for a violation of ARS 13-2810- "Interfering with Judicial Proceedings."

An *Emergency Order of Protection* may:

- Enjoin the defendant from committing a violation of one or more of the offenses included in domestic violence.
- Grant one party the use and exclusive possession of a shared residence.
- Restrain the defendant from contacting the plaintiff or other specifically designated persons and from coming near the residence, place of employment, or school of the other party, or any other specifically mentioned location.
- Prohibit the defendant from possessing or purchasing a firearm for the duration of the order.

Once served, the *Emergency Order of Protection* has the same force in law as a regular *Order of Protection*.

**3824.2    *Purpose***

The *Emergency Order of Protection* is intended to be used in situations where a person is in immediate and present danger of domestic violence, based on an allegation of a recent incident of actual domestic violence, and the courts are closed.

**3824.3    *Procedure for Obtaining an Emergency Order of Protection***

An officer may request an *Emergency Order of Protection* when there are reasonable grounds to believe that a person's life or health is in imminent danger from an act of domestic violence. An *Emergency Order of Protection* shall not serve as a substitute for arrest, but may be requested in addition to arrest in those cases where a victim's life or health would be in imminent danger after release of the defendant from jail. The decision to seek an *Emergency Order of Protection* requires the officer to use sound judgment under the circumstances at the time.

The Pima County Sheriff's Department (PCSD) maintains a list of the names and phone numbers of available judges, justices of the peace, magistrates, and commissioners who shall issue *Emergency Orders of Protection* by telephone. Officers wishing to obtain an *Emergency Order of Protection* may contact the Records Section of PCSD to obtain the

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name and phone number of the on-call judicial officer. Upon contacting the on-call judicial officer, the officer will state the grounds upon which he or she believes the emergency order should be issued. If a determination is made to issue the order, the officer who receives the verbal order shall write and sign the actual order and provide a copy to the protected party. If the emergency order is denied, the officer shall document this fact. Efforts to obtain an *Emergency Order of Protection* shall be documented on a *Multi-Purpose Report*.

The *Emergency Order of Protection* must be served on the defendant to be effective. If the defendant cannot be personally served, the officer may notify the defendant of the existence and content of the order by phone or by other means. The officer shall then document the service or the notification of the defendant. If the defendant has been verbally notified of the existence and substance of the order but not physically served, and commits an act that violates the order, the defendant may be arrested for "Interfering with Judicial Proceedings."

Officers shall verbally notify the PCSD Records Section of all *Emergency Orders of Protection* as soon as practicable after issuance. A sequential number will be assigned by PCSD and noted in the box labeled, "Court Case EP-No." If an order is issued but not immediately served on the defendant, an additional notification to the PCSD Records Section shall be made upon service or notification of the order to the defendant.

The original of an emergency order, which has been served on a defendant, shall be faxed to City Court. The fax receipt and original order shall be attached to the *Multi-Purpose Report* and forwarded to the TPD Records Section. The Records Section shall return the original *Emergency Order of Protection* to the appropriate court.

If an officer obtaining an *Emergency Order of Protection* cannot make service on the defendant, the officer shall give the protected party all copies of the order. Should the defendant return to the residence and another officer is called, that officer will then complete service on the defendant.

**3825 Preliminary Injunction (Marriage Dissolution Cases)**

**3825.1 General**

A *Preliminary Injunction* issued pursuant to dissolution of marriage or legal separation is a court order. A *Preliminary Injunction* is civil in nature, but a person violating it may be subject to arrest for violating ARS 13-2810- "Interfering with Judicial Proceedings."

A *Preliminary Injunction* issued pursuant to dissolution of marriage or legal separation is generally issued by a superior court judge. A *Preliminary Injunction* is issued to each party in any action for divorce, legal separation or annulment and contains the following orders:

- That both parties are prohibited from transferring, encumbering, concealing, selling, or otherwise disposing of any joint, common or community property of the parties



except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court.

- That both parties are prohibited from molesting, harassing, disturbing the peace of, or committing an assault or battery on the other party or any natural or adopted child of the parties.
- That both parties are prohibited from removing any natural or adopted child of the parties then residing in Arizona from the jurisdiction of the court without the prior written consent of the parties or the permission of the court.
- That neither party may remove the other or the children of the parties from an existing insurance coverage and that both parties shall maintain all insurance coverage.

Additionally, a *Preliminary Injunction* may:

- Exclude a party from the family home or from the home of the other party.
- Provide other injunctive relief that may be appropriate.

A preliminary injunction is enforced in the same manner as an Order of Protection and an Injunction against Harassment. Violation of the preliminary injunction is charged under ARS 13-2810- "Interfering with Judicial Proceedings," and field release is prohibited.

## **3830 CIVIL MATTERS**

### **3830.1 General**

Officers and members of the Department will frequently encounter situations that are civil in nature and involve dealing with orders from courts. This section will outline some of the more common types of situations encountered and procedures for dealing with them. If a member has any questions or concerns regarding dealing with any civil matter, the officer may contact the Legal Advisor's Office.

### **3830.2 Member Involvement in Civil Proceedings**

Members shall not institute any civil action arising out of their official duties without first notifying the Chief of Police through the Legal Advisor. Members shall not use their position with the Department as a means of forcing or intimidating persons with whom they are engaged in civil matters to settle the case in favor of the member of the Department. Members will consider advising their chain of command when they become involved in any civil action.



**3831 Subpoenas and Process**

**3831.1 Service of Process on Department Members**

Under no circumstances may any Department member accept service of process that relates solely to another member's private, non-police related business. Police personnel shall cooperate with process servers seeking to serve such process by:

- Informing them of a member's duty hours
- Informing them of a member's duty location
- Calling the member who is in the facility to the lobby area to receive the service of process

**3831.2 Service of Process Related to Department Business**

Any member who accepts service of process for another member shall first determine what type of legal document is being served.

If the document is a *Summons and Complaint* (notice of a lawsuit), the Legal Advisor shall be contacted to accept service of the document. The Legal Advisor is authorized to accept service of these legal documents if they relate to a member's employment with the agency.

If the document is a subpoena or subpoena *duces tecum*, the process server shall be directed to the police facility where the member works. Process servers with a subpoena or civil process for any employee assigned to work out of the Main Station shall be directed to the Headquarters Desk Unit.

**3831.3 Service of Subpoenas Upon Department Members**

Any member who accepts service of a subpoena shall not do so until first checking to ensure that the member named in the subpoena is not on vacation, off duty, or otherwise unavailable to receive the subpoena. Particular care shall be exercised to ensure that there is sufficient time prior to the hearing/trial date listed on the subpoena for the named member to actually receive the subpoena. If there is sufficient time for the member to receive the subpoena, the subpoena shall be accepted and forwarded immediately to the member.

If there is not sufficient time for the subpoena to be delivered, an effort shall be made to contact the member being subpoenaed by phone or pager, to advise the member of the service of the subpoena. If contact cannot be made, the subpoena will be returned to the process server. The process server will be advised of the subpoenaed member's normal working hours and location and when the member is next expected to be at work. In no event shall a member's home telephone number or address be provided to the process server.

Should the Department accept service of a subpoena for a member who is unavailable and cannot be contacted prior to the hearing/trial, it is the responsibility of that member's

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supervisor to immediately contact the Legal Advisor and the party issuing the subpoena to notify the party that the officer is unavailable and has not received the subpoena. If the subpoena is for a criminal case, the supervisor shall also contact the prosecuting attorney and inform the attorney of the situation.

**3831.4 Subpoenas from the County Attorney's Office**

Superior Court subpoenas issued by the County Attorney's Office will have a subpoena verification slip attached. Upon receipt of the subpoena, the named member shall detach, complete and return the verification slip.

**3831.5 Subpoenas from Defense Attorneys**

Members shall notify the Legal Advisor and the prosecuting attorney immediately upon receipt of a subpoena to appear as a witness for the defense in a criminal case.

**3831.6 Subpoenas from the City Public Defender's Office**

In order to conserve City resources, the City Public Defender's Office has been given permission to fax subpoenas to the appropriate police facility. Such faxed subpoenas shall be handled as if served under this procedure.

**3831.7 Civil Subpoenas**

Members shall immediately notify the Legal Advisor and the member's Commander of the service of any civil subpoena arising out of Department employment.

**3831.8 Service of Subpoenas and/or Civil Process by Department Members [CALEA 74.2.1]**

Normally, Department members will not become directly involved in the service of subpoenas or other civil process, except as provided by statute.

*Orders of Protection* and *Orders Prohibiting Harassment* shall be served by officers upon defendants in accordance with current *General Orders*.

**3832 Civil Disputes- General**

A civil dispute is a situation where no crime has occurred, yet there is the need for police presence to maintain the peace and provide safety to individuals and property. When a member receives a complaint which is considered a civil dispute, the member shall assist by maintaining the peace, providing safety, and referring the parties to their own attorneys or to another agency that may be able to provide assistance.

Citizens who indicate they need assistance in engaging an attorney may be referred to a legal services agency or referral source, such as the Lawyers Referral Service of the Pima County Bar Association or the Southern Arizona Legal Aid Society. Complaints of a civil nature that involve consumer fraud or landlord-tenant issues may be referred to the State Attorney General's Consumer Protection Division.



### **3833 Auto Repossessions**

#### **3833.1 General**

Department personnel often deal with disputes over auto repossessions. A lien holder (the person or bank that lent the money for the purchase) may lawfully repossess a vehicle with or without a court order (known as a *Writ of Replevin*). Repossession without a court order is known as a "self-help repossession".

#### **3833.2 Self-Help Repossessions**

Under Arizona law, a lien holder is entitled to exercise self-help to repossess a vehicle when the debtor is in default (falls behind in payments). This type of repossession takes place without a court order.

This right to repossession exists only so long as there is no "breach of the peace." If there is a breach of the peace, the legal right to repossess without a court order is lost, and the person attempting to repossess the vehicle may proceed with the repossession only after issuance of an appropriate court order.

In this context, a "breach of the peace" has been interpreted to include, among other things, forcible entry (cutting a lock on a gate, for example) onto a person's private property without consent or resistance by the owner to the repossession. This "breach of the peace" provision is found in the *Uniform Commercial Code* and is a civil concept. It does not constitute a criminal violation; however, other criminal violations that occur at the scene may be cited as appropriate.

Once a police officer is called to the scene of a self-help repossession, there has been by definition a breach of the peace. At that point in time, the person attempting to repossess the vehicle has lost their ability to do so without a court order. If the vehicle has been removed to a private storage lot, or the reposessor's office or residence prior to being taken to a storage facility, or is on a public street and the reposessor has possession of the vehicle, the repossession has been accomplished and the owner must resort to civil remedies to regain possession of the vehicle. If, in such situations, the reposessor is on the owner's property and has taken possession of the vehicle (hot-wired it, started it with a key or connected it to a tow truck) and refuses to release it, the officer shall prepare a *Multi-Purpose Report* showing a signed stolen report and a recovery. The officer shall then release the vehicle to the owner, with or without the consent of the reposessor. The officer shall not arrest the reposessor for auto theft under these circumstances.

#### **3833.3 Repossessions With a Court Order (Writ of Replevin)**

In some instances a lien holder will go to court and obtain a court order for repossession. This order, called a *Writ of Replevin*, allows for recovery of the vehicle in question. Such orders are generally served either by a Justice of the Peace Constable or by a Sheriff's Deputy.



If the person seeking to repossess the vehicle has a court order (*Writ of Replevin*) that authorizes the repossession of the vehicle, the person is entitled to take the vehicle.

## **3834 Residential Landlord-Tenant Disputes**

### **3834.1 Statutory Provisions**

There are three separate statutory enactments that govern landlord-tenant relationships:

- The *Residential Landlord and Tenant Act* governs most residential landlord-tenant relationships. Specifically exempted from this act are fraternities and sororities, federally regulated public housing, residence at an educational/medical institution, transient occupancy (hotels/motels), manager/custodian and occupancy under a contract for sale.

Transient occupants are those persons who are temporarily residing in a hotel or motel for a brief period of time and whose permanent residence is elsewhere. Whether or not a person is a transient occupant depends on the facts related to their residency (length of residence, personal belongings, other permanent residence, and intent) and not whether the establishment calls itself a hotel or motel.

- The *Mobile Home Parks Residential Landlord and Tenant Act* governs the relationship between the landlord of a mobile home park with four or more spaces and the tenant who owns the mobile home but is renting the land on which the mobile home is placed. This act does not apply to a mobile home and space if the same person owns both, to public housing or to recreational vehicles.
- The *Recreational Vehicle Space Rental Act* governs the relationship between the manager of a recreational vehicle park or Mobile Home Park and a tenant who rents a recreational vehicle space in the park for more than 180 consecutive days.

### **3834.2 Evictions by Police Officers**

Municipal law enforcement officers do not have the authority to evict a tenant and officers shall not evict, threaten to evict, or assist in evicting a tenant in situations covered by one of these three Acts.

### **3834.3 Violations of Landlord-Tenant Laws**

When a landlord or tenant takes some action which clearly violates the landlord-tenant law, the responding officer will work with both the tenant and the landlord to educate them concerning the requirements of the law, the appropriate legal remedies each may have, and try to persuade them to comply with the law. However, these are not situations in which officers have the authority to make arrests or otherwise attempt to force compliance with the law; these are civil disputes. If the conflict cannot be resolved, both parties shall be referred to their private attorneys or to the courts for resolution of the conflict.



Once a tenant has been properly evicted from a residential dwelling, by the service of a *Writ of Restitution* by a constable, the tenant may be arrested for trespass if the tenant re-enters the property without the express permission of the landlord. Officers must verify that a writ of restitution has been served prior to making such an arrest.

Officers are encouraged to contact the Legal Advisor for assistance with landlord-tenant questions.

#### **3834.4 Commercial Property**

The rules related to commercial property are very different from those relating to residential property. Essentially, unless the lease provides a different process, immediate repossession is allowed once the tenant is in arrears for non-payment of rent for more than five days. In addition, unless the lease provides a different remedy, the commercial landlord will have lien against most of the personal property at the site pending the payment of rent. In commercial disputes, the only role for the officer is to preserve the peace and refer the parties to their attorneys for assistance.

#### **3834.5 Innkeeper-Guest Disputes**

Hotels and motels renting to transient occupants have a lien on the property of guests who do not pay for services rendered. The innkeeper may keep the property pending payment; if payment is not made, the property may be sold (after four months) to recover the amounts due. These liens are authorized by ARS 33-951 and ARS 33-952.

### **3835 Liens**

#### **3835.1 Mechanic's or Garageman's Liens**

Under ARS 33-1022, proprietors of garages, repair, and service stations have a statutory lien on vehicles on which they have worked, allowing them to maintain possession of a vehicle until paid, *only* if there is a clear agreement for the specific amount to be paid. The agreement need not be in writing, but there must be agreement by both parties to the terms of any verbal agreement. Where there is no such agreement, the vehicle cannot be withheld by the mechanic. If the mechanic refuses to release the vehicle, officers will handle the situation in the same way as a tow company that refuses to release a vehicle. See *General Orders 3835.3*.

#### **3835.2 Statutory Liens**

Possessory liens (the right to keep property until paid for services rendered) exist in Arizona only by statute. There are a wide variety of such liens, including livestock liens and liens on personal property (wearing apparel, vehicles other than motor vehicles, etc.). If a person asserts a lien on property and an officer is uncertain whether such a lien exists, the officer may contact the Legal Advisor for assistance.



### **3835.3 Liens on Towed Vehicles**

In Arizona, a tow company that has towed a vehicle from public or private property has no right to keep the vehicle until paid (there is no possessory lien on the vehicle), except in two situations:

- If the tow was directed by a law enforcement officer
- If the tow was done by an express agreement between the owner and a garage, repair station or service station

If an officer is confronted with a situation in which a tow company refuses to release a vehicle to its owner, the officer will first determine if the vehicle was towed under either of the two conditions stated in the section above. If it was, then the owner must pay the cost of the towing or storage prior to the vehicle being released. If the officer determines that the tow was not pursuant to an agreement with a repair, garage or service station, and was not a law enforcement directed tow, then the officer will:

- Advise the tow truck driver or tow company operator that the vehicle must be released to the owner
- The tow truck operator or company will be advised that the debt owed is a civil debt and that they can proceed to recover on that debt as they would any civil debt (in court)

If the tow truck driver or company refuses to release the vehicle, the officer will take a stolen report from the vehicle's owner, seize the vehicle pursuant to that report and then release the vehicle to the owner. The officer shall not arrest the tow company's representative in this situation for auto theft, but shall direct the report to detectives for follow-up. If appropriate, other offenses arising from the situation (for example, disorderly conduct, assault, etc.) may be filed.

### **3836 Child Custody Issues**

Among the more complex civil situations encountered by officers in the field are those in which parents are fighting over child custody or court-ordered visitation, presenting various custody orders from the court (sometimes multiple orders from multiple courts), and demanding that officers move children from the custody of one parent to the other. As well as the usual officer safety issues, these situations often involve the safety and welfare of the children.

#### **3836.1 Children Potentially at Risk**

First and foremost, officers must be aware of the welfare of the child. A child may be taken into temporary custody for the child's own welfare under the following conditions:

- Suspicion of physical or sexual abuse
- Suspicion of neglect
- Any situation where there is potential for harm to the child (i.e., both parents are unconscious and unable to suggest a suitable alternative).



If there are reasonable grounds to believe that taking the child into temporary custody is necessary, officers should follow the procedures set forth in *General Orders* under Child Protective Services/Temporary Custody Notice.

#### 3836.2 Child Custody Matters Without a Court Order

In the absence of a court order, the following general rules and guidelines apply:

If the child was born out of wedlock, paternity has not been established, and there is no order concerning custody or access to the child, the mother is generally entitled to sole custody of the child, per the custodial interference statute, ARS 13-1302.

If the child was born out of wedlock and paternity has been established (by signature on the birth certificate, the signing of a notarized statement, genetic testing or court order), then the party who has had custody for the majority of the past six months is allowed by statute to retain custody of the child.

If the parents were married at the time of the child's birth, the parents have joint custody of the child and neither parent is entitled to sole custody. In such a situation, it is unlawful for one parent to take sole custody of a child with the intent to permanently exclude the other parent, even if there is no custody order.

#### 3836.3 Court Orders in Child Custody Matters

Officers should request copies of whatever court orders are alleged to exist regarding the children.

Court orders do not need to have a seal to be valid, but they must have a date and the judge's signature. Officers may verify Pima County Superior Court orders by contacting the Pima County Superior Court, Clerk's Office, Monday through Friday between 0800 and 2400. If the situation arises during regular business hours, out of state courts may also be contacted to verify orders.

If both parties agree that a particular court order is the current order in a case, then its validity may be presumed. If the parties have opposing or contradictory paperwork, **the officer should make no arrests in the case**, but should document the situation and send the case to the Family Crimes Section of ISB for follow-up.

#### 3836.4 Criminal Enforcement of Child Custody and Visitation Orders

Court orders establishing custody and visitation generally **do not** provide an officer with the authority to forcibly relocate a child from one parent to the other; these orders are directed to the parents and require action on the part of the parents, not on the part of the officer. Officers do, however, have the authority, and responsibility, to encourage voluntary compliance with such court orders.

Officers also have the authority to make arrests for violations of these orders. The two applicable statutes are:



▪ **ARS § 13-1302 *Custodial Interference***

A person who withholds a child from another person who has lawful custody has committed custodial interference. The statute applies in the following circumstances:

- A child or incompetent person is withheld from the person or institution having lawful custody.
- Before a court has entered an order regarding custody, one parent denies another access to their child.
- In cases where there is by joint custody established by court order, withholding the child from the other custodian.
- Refuses or fails to return a child to a custodian outside of the state when required to do so.

The statute provides that, if a child is born out of wedlock, the mother is the legal custodian of the child for the purposes of this statute until paternity has been established and custody or access is determined by a court.

This statute also provides certain defenses for withholding access. The defense applies only if the defendant is a parent with the right of custody, who has begun the process to obtain an order of protection or petition for custody and has reason to believe that the child would be in danger if left with the other parent.

Prior to making an arrest under this statute, the officer should advise the defendant of the intention to make an arrest and ask the defendant one final time to comply with the law. If the defendant refuses, an arrest may be made for a Custodial Interference as a class 6 felony. If the defendant provides access to the child as required, the defendant may be arrested (or cited) for Custodial Interference as a class 1 misdemeanor.

In any incident in which a court order is involved, the court order should be documented in the case report. The documentation must include, at minimum, the name of the court, the case number and the date of the order. If the victim has a copy of the order that he or she is willing to allow the officer to take, the order should be taken as evidence.

▪ **ARS § 13-1305 *Access Interference***

This statute prohibits a person, who knows or has reason to know that they have no right to do so, from engaging in a pattern of behavior that prevents, obstructs or frustrates access (visitation) rights to a child. A violation is a class one misdemeanor unless the child is removed from the state, in which case it is a class 5 felony. A



single incidence of interference with visitation does not violate this statute, which requires a "pattern" of behavior.

In some situations, the involved persons may be able to demonstrate a pattern (prior police reports, for example). If the evidence is available at the scene (officers should, for example, contact Records to check for prior incidents), the officer may make an arrest. If the evidence is not available at the scene, the incident should be documented for follow-up by the Dependant Child Unit.

#### **3836.5 Arizona Courts "Pick-up Orders"**

This type of order allows officers to transfer custody of children from one parent to another. Generally referred to as a "pick-up order," the order will contain language that specifically authorizes a law enforcement officer to move a child from one place to another.

Such orders shall be verified prior to acting on them. If verification is not possible, the officer shall contact a Department Legal Advisor prior to acting on the order. When an officer relies on such an order, the officer shall either get a copy of the order to be placed into evidence, or shall include in the police report a complete description of the order, including which court issued the order, the docket number and the date of the order.

#### **3836.6 Out of State Courts: Warrant to Take Physical Custody of a Child**

Under the recently adopted Uniform Child Custody Jurisdiction and Enforcement Act, child custody orders from out of state may be enforced by the Arizona courts once the order has been registered with the court.

The Act provides authority for the Arizona courts to issue a warrant for the physical custody of a child. The warrant is required to:

- Recite the facts upon which it is based;
- Direct law enforcement officers to take physical custody of the child immediately; and
- Provide for the placement of the child pending final order of the court.

Any officer who receives such a warrant should verify the warrant and enforce it as stated in the warrant.